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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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EMERY SLAYDEN,

Petitioner,

v.

E.K, MCDANIEL, et al.,

Respondents.

Case No. 2:06-cv-00664-APG-CWH

**ORDER**

On March 13, 2009, this court denied petitioner Emery Slayden's 28 U.S.C. § 2254 habeas corpus petition, and judgment was entered on March 16, 2009 (ECF Nos. 21, 22). On February 21, 2017, Slayden filed what he styled a motion to supplement petition (ECF No. 37). This court denied the motion (ECF No. 39). Slayden has now filed a motion to compel disclosure and for an extension of time (docketed as two motions at ECF Nos. 40 and 41). These motions shall also be denied.

As the court explained previously, Slayden's petition has already been adjudicated on the merits. He seeks to challenge the same judgment of conviction. 28 U.S.C. § 2244(3)(A) provides: "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Where a petition has been dismissed with prejudice as untimely or because of procedural default, the dismissal constitutes a disposition on the merits and renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576

1 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th  
2 Cir. 2005).

3 In the current motion, Slayden states that he needs another copy of a letter that  
4 his former girlfriend wrote at the time of his arrest that he claims is exculpatory because  
5 he "g[ave] the last copy out to an old friend" (ECF No. 40, p. 2). Slayden also states  
6 that the letter was a part of the record in his state habeas case. Here he again attempts  
7 to challenge the same judgment of conviction, and as he was previously advised, he  
8 must seek and obtain leave of the appeals court to pursue a successive petition. See  
9 28 U.S.C. § 2244(b)(3) et seq. Accordingly, Slayden's motion is denied.

10 **IT IS THEREFORE ORDERED** that petitioner's motion for order compelling  
11 disclosure or discovery and sanctions (ECF No. 40) and motion for extension of time to  
12 complete discovery (ECF No. 41) are both **DENIED**.

13 DATED: 10 May 2017.

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16 ANDREW P. GORDON  
17 UNITED STATES DISTRICT JUDGE  
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